

VZCZCXRO4462  
OO RUEHCN RUEHGH  
DE RUEHBJ #0900/01 1521133  
ZNY CCCCC ZZH  
O 011133Z JUN 06  
FM AMEMBASSY BEIJING  
TO RUEHC/SECSTATE WASHDC IMMEDIATE 7288  
INFO RUEHOO/CHINA POSTS COLLECTIVE PRIORITY  
RHEHNSC/NSC WASHDC PRIORITY

C O N F I D E N T I A L SECTION 01 OF 02 BEIJING 010900

SIPDIS

SIPDIS

NSC FOR WILDER  
DEPT FOR DRL, L AND EAP/CM

E.O. 12958: DECL: 06/01/2031  
TAGS: [PHUM](#) [PREL](#) [KJUS](#) [PINR](#) [CH](#)  
SUBJECT: NEW RULES FOR RIGHTS DEFENSE LAWYERS

REF: A. BEIJING 1303  
[1](#)B. BEIJING 6612

Classified By: Classified by Acting Internal Political Unit Chief  
Susan Thornton. Reasons 1.4 (b/d).

[1](#)1. (C) Summary: The All-China Lawyers Association (ACLA) has issued a "Guiding Opinion on Lawyers Handling Mass Cases" that calls for lawyers in "collective" and "major sensitive" cases to "accept the monitoring and guidance" of judicial agencies. The Opinion discourages lawyers from participating in non-litigation activities and notes that they should approach the media and foreign organizations "cautiously." Clearly meant as a warning to public interest lawyers and those willing to press the cases of activists, it is unclear at this point what the impact of the guidance will be. It appears, however, that the leadership's concerns over the potential for intellectuals to team up with disaffected groups and threaten social stability are at the core of the new rules. End Summary.

[1](#)2. (SBU) On May 15, the ACLA published a "Guiding Opinion on Lawyers Handling Mass Cases" providing that lawyers who take on such cases should report the cases to government officials through their bar associations and "accept the monitoring and guidance of judicial administration agencies." The opinion applies to both "collective cases," defined as those involving ten or more people, and "major sensitive cases," which are not defined in the opinion. Lawyers are banned from supporting "petitioning" and other activities that disturb the normal work of state organs or that disturb social order. They are also cautioned against participating in non-litigation activities and told to approach the media and foreign organizations "cautiously." The notice requires lawyers to work with local authorities to resolve disputes and to notify judicial authorities if they identify problems that might "intensify" disputes. Violations may result in professional sanctions.

ACLA Efforts to Improve MOJ Draft  
-----

[1](#)3. (C) Beijing defense attorney Mo Shaoping, who is a member of the ACLA Criminal Defense Committee, said ACLA members were called to meetings in March by Ministry of Justice officials and presented with a draft of the new guidance to be issued by the ACLA. According to Mo, ACLA debated the text and made some marginal improvements, but felt it had no choice other than to issue the guidance. Mo interpreted the new guidance as an attempt to warn attorneys to steer away

from sensitive social issues, especially those involving land and petitioners. As an example, Mo pointed to efforts by private oilfield owners in Shaanxi Province to gain compensation for their wells that were confiscated by local government (ref A). The attorney who organized the private owners, Mo's former employee Zhu Jihu, was jailed for several months last year on charges of illegal assembly after meeting with his petitioner clients.

¶4. (C) ACLA Human Rights and Constitutional Law Committee Chairman Wu Ge said that ACLA attorneys tried to make something positive out of the bad draft rule that was presented to them by MOJ. He and other attorneys submitted comments successfully modifying parts of the rule to affirm lawyers' duties to take on pro bono cases, including the defense of lawyers jailed in the line of duty. But he acknowledged that the rule will make it much more difficult to pursue cases, especially in provinces outside of Beijing, where cooperation with local authorities is mandated. Attorney Wang Li of Shenyang's Tong Yang Law Firm said, however, that his law firm will continue to do pro bono work after the rule takes effect, but that it has always done so mindful of the need to keep authorities informed and to be wary of the social implications of such work.

¶5. (C) Well-known Shanghai criminal lawyer Liao Xiaohua told Consulate Rule of Law Coordinator that the guideline was actually helpful, as it clarified what kinds of cases were "safe." He predicted that this would encourage his firm to take on more collective litigation cases, as it would reduce the

BEIJING 00010900 002 OF 002

scope for interference from the Shanghai Municipal Government. Nanjing Intermediate Court Civil Litigation Section Chief Judge Yao Zhijian said the guideline wouldn't have a major impact on his court, as the court already treats cases involving multiple parties separately, both to avoid scrutiny and to get credit for handling a large number of cases. Fudan University Law Professor Zhang Wusheng said many lawyers in Shanghai use the same approach.

ABA Sees Opinion Discouraging Collective Cases

¶6. (C) Allison Moore, representative of the American Bar Association in Beijing, said the rule could potentially inhibit "social impact" litigation. The rule's origin came from complaints by local bar associations and provincial justice bureaus that they could not control Beijing attorneys filing public interest cases in their areas, Moore said. Some officials complained that "management of attorneys needed to be strengthened" to prevent embarrassment for local officials.

¶7. (C) Two provisions of the rule in particular will be especially limiting for public interest attorneys, Moore predicted. First, environmental litigator Wang Canfa told Moore that the rule will likely restrict the ability of Beijing and Shanghai lawyers to file cases in provincial areas. Most anti-pollution litigation that Wang's Center for the Victims of Pollution handles is now done in ad hoc partnership with individual local attorneys, Wang explained. The new rule requires that three lawyers sign off and take responsibility for any group case filed in their areas, including three partners in a single law firm. This provision will make it harder for the Beijing attorneys with special expertise to convince local attorneys to take on cases that might irritate local officials, Wang predicted.

18. (C) Second, by limiting contact with the media and restricting other "non-litigation tactics," the rule makes it increasingly unlikely that social problems will be resolved through litigation. Most attorneys filing lawsuits to address social issues recognize that victory in court is quite unlikely, Moore said. Rather, many class-action lawsuits are filed to raise attention to social problems in the media and with Central Government officials. By restricting the ability of lawyers to gain media attention and generate concern in Beijing about local problems, the rule will make litigation a less effective tool and, instead, will help local officials cover up embarrassing situations, Moore said. She noted that her opinions on the new rule were informed by talks with public interest attorneys handling criminal defense, environmental and women's and children's cases.

19. (C) Comment: The Opinion is clearly meant as a warning to or check on public interest lawyers and the "rights defense movement" (Ref B), whose leaders include many Beijing rights attorneys. These lawyers have, over the past three years, challenged government officials by raising a series of high-profile cases addressing issues such as censorship, criminal detention and rural issues. While the implementation and potential effects of the Opinion are not yet clear, the leadership's concerns about the potential for intellectuals to team up with disaffected groups and disrupt social stability will likely mean continuing difficulties for rights defenders.

RANDT